IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7761 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANISH BABUBHAI ANSARI

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for the Petitioner.

Mr.V.M.Pancholi, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 29.7.2002, by which the petitioner is detained as a "dangerous person"

under the Prevention of Anti-Social Activities Act, 1985. Along with the detention order, he is served with the grounds of detention of the same date. In the said grounds, there is a reference about two complaints filed against the petitioner under various sections of the Indian Penal Code. There is also a reference about Statements of Witnesses.

So far as the two criminal cases are concerned, learned Advocate for the petitioner submitted that since the said complaint, on the face of it, were false, the petitioner was released on bail. He submitted that, even otherwise, the said complaints are in the nature of a private dispute and hence, involving violation of law and order, and not public order in case it is found that the petitioner has prima facie committed a punishable offence. He submitted that the offence is in connection with theft or robbery on the part of the petitioner for demanding money. Even according to him, all these statements are fabricated and they are taken only in order to make out a case under the preventive detention. Learned Advocate for the petitioner, therefore, argued that this is not a case in which public order is disturbed, but, at the most, it can be said that law and order is disturbed. Under the circumstances, it is submitted that there is no justification in detaining the petitioner under preventive detention. Learned Advocate for the petitioner also further submitted that the last case registered against the petitioner is on 11th June, 2002 and the detention order is passed on 29.7.2002. He submitted that if, really, the alleged activities of the petitioner were such that he can be called a "dangerous person", it was not necessary to wait for more than 45 days to pass the order of detention. It is submitted that by delay in passing the order, the entire object of preventive detention is frustrated. He submitted that delay in passing the order itself shows that the activity of the petitioner is not such that he is required to be detained.

However, the detaining authority has filed an affidavit and he has tried to explain the delay. In paragraph 25 of the affidavit-in-reply, the Authority has stated as under :-

> " ... ...
>
> 25. With respect to para 2.23 of the petition, I say and submit that the last offence registered against the petitioner is on

11.6.2002 while statements of the undisclosed witnesses have been recorded on 2.7.2002 and 3.7.2002 narrating the incidents dated 18.12.2001 and 22.5.2002 and the same were verified by me on 23.7.2002 and the order of detention came to be passed on 29.7.2002. Hence, there is no delay in passing the order of detention.

... ..."

However, it is required to be noted that so far as the last incident is concerned, it is of 11.6.2002. In this connection, learned Advocate for the petitioner placed reliance on the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

" ... ...

21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference maybe made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR

1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.

... ..."

Prima facie, it is difficult to understand as to how a witness is coming forth for giving his statement after 7 months of the incident. On the face ot if, looking to the statement in question, it is clear that the authority has tried to cover up the delay. If the detaining authority was really so serious about the so-called activities of the petitioner, it was not necessary to wait for such a long time and, therafter, to cover up the delay, the story of recording the statements of certain witnesses has been brought forth, who, surprisingly, had tried to give such statement after 7 months after the so-called incident.

Under the aforesaid circumstances and in view of the aforesaid judgment of this Court, this petition is required to be allowed. Accordingly, this petition is allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. Rule is made absolute.

5th March , 2003 (P.B. Majmudar, J.)

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(apj)